



Legislation Text

File #: APPL-23-0008, **Version:** 1

An appeal of the Planning Commission decision to deny the appeal of the Notice of Violation and Order to Abate for the CSU Wilson Tank Development Plan.

(Quasi-Judicial)

Presenter:

William Gray, Senior Planner, Planning and Neighborhood Services
Peter Wysocki, Director, Planning and Neighborhood Services

Owner: City of Colorado Springs

Appellant: Colorado Springs Utilities (“CSU”)

Representative: David Padgett, General Manager, CSU - Projects and Programs

Location: 6560 Alabaster Way

The Appellant filed a Notice of Appeal pursuant to Section 7.5.415 (Appeals) on the Planning Commission decision to deny the appeal of the Notice of Violation and Order to Abate for the CSU Wilson Tank Development Plan Major Modification (“Wilson Tank Notice and Order”). The basis for the appeal is that the decision of Planning Commission is erroneous and contrary to the law. More specifically, the Appellant asserts that the Planning Commission decision to uphold the Wilson Tank Notice and Order prevents them from exercising its vested right under the approved building permit for the water storage tank. Section 7.5.503 of the Uniform Development of the City of Colorado Springs (“UDC”) states that “[t]he Building Official shall approve an application for Building Permit only upon determining that the application complies with all applicable requirements” and Colorado case law on the reliance of an approved building permit to proceed with construction, both of which support their position that the decision made by the Planning Commission is erroneous and contrary to law (see “Notice of Appeal” attachment).

Background:

The site is located at 6560 Alabaster Way immediately west of Mountain Shadows Filing No. 22, and it is 3.63 acres in size. The property is zoned PF (Public Facilities) with HS-O (Hillside Overlay) and WUI-O (Wildland Urban Interface Overlay). The purpose of the PF zone district is the following:

“The PF zone district is provided for land that is, for example, used or being reserved for a governmental, utility, or telecommunication purpose by the City of Colorado Springs, El Paso County, the State of Colorado, the Federal government, a public utility, a telecommunications provider, or a private provider of a traditional government function. Generally, the existing or proposed use is a unique governmental or utility service or a governmental function. Uses allowed in the PF zone district generally include governmental functions or utility services provided by the City of Colorado Springs, El Paso County, the State of Colorado, the Federal government, or a public utility and to private facilities that perform traditional government functions such as jails and halfway houses.”

Current use of the site is for a CSU water storage tank, pump station and ancillary uses. The use is a permitted use in the zone district. Dimensional standards such as lot size, setback, and building height are determined at the time of Development Plan review.

On June 21, 2022, City Planning administratively approved the CSU Wilson Tank Development Plan (AR-DP-00526) finding that it met the review criteria for development plans. The development plan provided for the construction of a 5-million-gallon water storage tank with a maximum building height of 45-feet and removal of the existing water tank (see “Approved Development Plan” attachment).

The building permit for the new water storage tank was issued on May 5, 2023. On June 13, 2023, the water tank height was called into question by a neighboring property owner. City Planning learned of the water tank height discrepancy on June 23, 2023. In late June City Staff met with CSU to discuss the height difference between the development plan and the building permit. At this meeting, options to address the problem were outlined to CSU. This included modifying the existing tank to bring it into compliance with the maximum allowed height to amending the development plan to increase the permitted height to 60 feet. We also discussed the importance on acting quickly to address the situation because tank construction was for all practical purposes complete. The Applicant elected to pursue the major modification to the approved development plan allowing additional height for the water tank and submitted the request on July 17, 2023.

Shortly after public notice was made on the proposed development plan major modification, City Planning received demands from neighbors that a violation of the development plan had occurred and that a notice of that violation was needed and necessary under the UDC (see “Stop Work Demand” attachment). A Notice of Violation and Order to Abate was issued to the Applicant on the August 30, 2023 (see “Wilson Tank Notice and Order” attachment) because the project was not in compliance with the approved Development Plan.

UDC Section 7.1.106, Conformity with regulations states the following:

“It shall be unlawful to use any building, structure, or land or to erect, move, structurally alter, convert, extend, or enlarge any building or other structure except in conformity with the requirements established in the zone district in which said structure, building, or land is located and in compliance with all applicable provisions of this UDC.”

The Appellant is erecting a structure that is not in compliance with the provisions of the UDC. UDC Section 7.5.515.F.4 requires continued compliance to the approved development plan or as amended or modified, and the current development plan has not been modified to allow the increase in height. Therefore, the project is not in compliance with applicable provisions of this UDC. With this finding, the Wilson Tank Notice and Order meet the express language of the UDC, is not erroneous or contrary to law because a violation of the UDC exists and that violation needs to be remedied. Furthermore, City Planning + Neighborhood Service has the authority to enforce the provisions of the development code under UDC Section 7.5.9, General Enforcement, which includes the authority to issue a Notice and Order for a violation. See the attached Wilson Tank Notice and Order City Planning Commission Staff Report for a complete description of the project history, project details and Staff’s analysis of the appeal application.

Review Criteria:

An application for an appeal of Planning Commissions decisions may be affirmed, reversed or

modified if it is determined that one (1) or more of the applicable review criteria have been met. The review criteria for this decision are set forth in City Code Section (UDC) 7.5.415.A.2, as follows (refer to the underlined criteria in subsection (2)):

2. Notice of Appeal

a. The notice of appeal shall state:

- (1) The specific provision(s) of this UDC that is the basis of the appeal; and
- (2) Which of the following criteria for reversal or modification of the decision is applicable to the appeal:
 - (a) The decision is contrary to the express language of this UDC; or
 - (b) The decision is erroneous; or
 - (c) The decision is clearly contrary to law; and
- (3) Describe how the criteria for the relevant application have or have not been met.

In Staff's review of the proposed application that was presented to Planning Commission and which was included as a part of the appeal of Planning Commission's decision it is determined that the appeal does not meet the necessary review criteria.

Previous Council Action:

City Council previously acted on this property as follows:

1. 1960 when the City of Colorado Springs acquired the property.
2. 1971 when the City of Colorado Springs annexed Flying W Addition No. 1 by Ordinance No. 4201.
3. 1993 when rezoned from A/HS (Agricultural with Hillside Overlay) to PF/HS (Public Facilities with Hillside Overlay).
4. 2006 with the approval of the Mountain Shadows Master Plan (Need to confirm original approval date of Mountain Master Plan).
5. 2023 when considering the appeal of the CSU Wilson Tank Height Increase Development Plan Major Modification.

Financial Implications:

N/A

City Council Appointed Board/Commission/Committee Recommendation:

At the City Planning Commission meeting held on October 11, 2023, the appeal application was considered under new business. A City Planning Commission motion to deny the appeal and uphold the Wilson Tank Notice and Order passed on a 8:0:1:0 vote, resulting in the denial of the appeal and continued implementation of the Wilson Tank Notice and Order (Commissioners Almy, Briggs, Foos, Hensler, Hente, McMurray, Raughton and Slattery voted aye, and Commissioner Rickett was absent). With this decision the Planning Commissioner's determined that the proposed application did not meet the criteria established to reverse or modify the decision of City Staff to issue the Notice

of Violation and Order to Abate (See enclosed "Planning Commission Minutes" attachment for a more detailed review of the project discussion).

1. Affirm the decision of the Planning Commission and deny the appeal; or
2. Reverse the decision of the Planning Commission and approve the appeal; or
3. Modify the decision of the Planning Commission and approve the appeal; or
4. Remand the matter back to the Planning Commission for further consideration.

Should the City Council wish to affirm the Planning Commission decision to deny the Wilson Tank Notice and Order appeal application, the following motion is suggested:

Deny the appeal and uphold the Planning Commission decision on the Wilson Tank Notice and Order, based upon the findings that the review criteria for deciding on an appeal as set forth in City Code Section 7.5.415.A.2 are not met.

Should the City Council wish to reverse the Planning Commission decision to deny the Wilson Tank Notice and Order appeal application, the following motion is suggested.

Approve the appeal and reverse the Planning Commission decision on the Wilson Tank Notice and Order, based upon the finding that the review criteria for deciding on an appeal as set forth in City Code Section 7.5.415.A.2 are met.

Should the City Council wish to modify the Planning Commission decision to deny the Wilson Tank Notice and Order appeal application, the following motion is suggested.

Deny the appeal and modify the Planning Commission decision on the Wilson Tank Notice and Order, based upon the findings that the review criteria for deciding on an appeal as set forth in City Code Section 7.5.415.A.2 are not met and add the following condition to abate the violation:

- 1) The water storage tank is completed to comply with the approved development plan (AR-DP-00526) dated June 21, 2022.

Should the City Council wish to remand the matter back to the City Planning Commission for further consideration, the following motion is suggested.

Remand the matter back to the City Planning Commission for further consideration on recommended actions to abate the violation of the UDC.